

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOSE VIVEROS SALAS, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. 4:16-cv-_____
§
J HERNANDEZ GENERAL §
CONTRACTING SERVICES, LLC, §
JUVENTINO HERNANDEZ, and §
ADA HERNANDEZ, §
§
Defendants. §

PLAINTIFF'S ORIGINAL COMPLAINT

SUMMARY OF SUIT

1. Defendants J Hernandez General Contracting Services, LLC (the "Company"), Juventino Hernandez, and Ada Hernandez (collectively, the "Defendants") operate a general contractor construction/remodeling enterprise. Defendants Juventino Hernandez and Ada Hernandez are the managing members of the Company.

2. Plaintiff Jose Viveros Salas (the "Plaintiff"), while employed by the Defendants, was not properly compensated at one and one-half times his regular hourly rate for all hours worked over forty (40) hours per workweek.

3. Accordingly, the Plaintiff brings this action to recover unpaid overtime compensation, liquidated damages, and attorneys' fees owed to him under the Fair Labor Standards Act, 29 U.S.C. Section 216(b) (2016) (the "FLSA").

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 29

U.S.C. § 216(b) (2016) and 28 U.S.C. § 1331 (2016).

5. The Plaintiff brings this complaint in the district in which (i) he resided while employed by the Company; (ii) the Company has its principal place of business; and (iii) a substantial portion of the conduct charged occurred. Accordingly, venue is proper in this district pursuant to 28 U.S.C. § 1391(b) (2016).

THE PARTIES

6. The Plaintiff is a resident of Houston, Harris County, Texas. In performing his duties, the Plaintiff engaged in commerce or in the production of goods for commerce.

7. The Company, an enterprise engaged in commerce, is a Texas limited liability company and has acted, directly or indirectly, in the interest of an employer with respect to the Plaintiff. The Company may be served with process by serving its registered agent, John K. Hannan, 1980 Post Oak Blvd., Suite 2100, Houston, Texas 77056.

8. Defendant Juventino Hernandez, one of the Company's managing members, is an individual residing in Stafford, Texas. Defendant Juventino Hernandez is engaged in commerce within the meaning of the FLSA and has acted, directly or indirectly, in the interest of an employer with respect to the Plaintiff. Defendant Juventino Hernandez may be served with process at 13401 Murphy Road, Suite B, Stafford, Texas 77477.

9. Defendant Ada Hernandez, one of the Company's managing members, is an individual residing in Stafford, Texas. Defendant Ada Hernandez is engaged in commerce within the meaning of the FLSA and has acted, directly or indirectly, in the interest of an employer with respect to the Plaintiff. Defendant Ada Hernandez may be served with process at 13401 Murphy Road, Suite B, Stafford, Texas 77477.

FACTUAL BACKGROUND

10. The Company provides general contracting construction and remodeling services in the greater Houston area.

11. The Plaintiff, an hourly employee, was employed by the Company as a carpenter/general laborer. The Plaintiff regularly worked more than forty (40) hours each workweek. Nevertheless, the Plaintiff was not paid one and one-half (1½) times his regular hourly rate for all hours worked over forty (40) hours per week.

12. At all times material to his employment, the Plaintiff was entitled to be paid one and one-half (1½) times his regular rate for all hours worked in excess of forty (40) hours in a workweek. 29 U.S.C. § 207(a) (2016). Accordingly, the Defendants' practice of failing to pay the Plaintiff overtime compensation is a clear violation of the FLSA.

13. Defendants Juventino Hernandez and Ada Hernandez have a substantial financial interest in the Company and are directly involved in:

- a. the hiring and firing of the Company's employees;
- b. the day-to-day operations of the Company as they relate to defining the terms of employment, workplace conditions, and the level of compensation to be received by Company employees;
- c. the Company's finances; and
- d. corporate decisions.

CAUSE OF ACTION

Violations of the FLSA

14. The Plaintiff incorporates the allegations contained in paragraphs 1 through 13.

15. The Company's practice of failing to pay the Plaintiff for all overtime hours at one and one-half (1½) times his appropriate regular hourly rate, was and is in violation of the FLSA.

16. Accordingly, the Plaintiff is entitled to his unpaid overtime compensation in an amount which is one and one-half times (1½) his appropriate regular hourly rate of pay.

17. Additionally, the Plaintiff is entitled to an amount equal to all of his unpaid wages and unpaid overtime compensation, as liquidated damages.

18. Finally, the Plaintiff is entitled to reasonable attorneys' fees and costs of this action. 29 U.S.C. § 216(b) (2016).

PRAYER

WHEREFORE, the Plaintiff requests that this Court award him judgment against Defendants J Hernandez General Contracting

Services, LLC, Juventino Hernandez and Ada Hernandez, jointly and severally, for the following:

- a. damages for the full amount of his unpaid overtime compensation;
- b. an amount equal to his unpaid overtime compensation as liquidated damages;
- c. reasonable attorneys' fees, costs and expenses of this action;
- d. pre-judgment and post-judgment interest at the highest rates allowable by law; and
- e. such other and further relief as may be allowed by law.

Respectfully submitted,

/S/ Mark Siurek
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